UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 52116 / July 25, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11989

In the Matter of **PRUDENTIAL EQUITY GROUP, LLC, f/k/a PRUDENTIAL SECURITIES INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Prudential Equity Group, LLC, f/k/a Prudential Securities Incorporated[1] ("Prudential Equity" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934, as set forth below.

[1] Prudential Equity formally exited the underwriting and domestic retail securities businesses in or about July 2003. Around that time, the firm was renamed Prudential Equity Group, Inc. and has since been reorganized as Prudential Equity Group, LLC.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[2] that:

A. RESPONDENT

Prudential Equity Group, LLC is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act and is a member of NASD, Inc. and the New York Stock Exchange, Inc. Prudential Equity's principal place of business is in New York, New York.

B. SUMMARY

In October 2001, Prudential Equity received a $100,000 payment in consideration for publishing research on a public company. Prudential Equity did not disclose this payment in its research reports, in violation of Section 17(b) of the Securities Act of 1933 ("Securities Act"). Prudential Equity also failed to locate and produce documents concerning this payment in a timely manner during the course of the Commission staff's investigation, in violation of Section 17(b) of the Exchange Act.

C. FACTS

In August 2004, after an investigation by the Commission's staff, the Commission issued a settled administrative and cease-and-desist order against Prudential Equity for failing to disclose that it had received payments in consideration for publishing research on three public companies.[3] During the course of the investigation, the staff had requested that Prudential Equity produce all documents relating to payments in consideration for publishing research that had been received by Prudential Equity. Approximately one month after the settlement, Prudential Equity notified the staff that it had recently located several additional documents responsive to the staff's request that it had not produced previously. In particular, Prudential Equity had located an internal accounting document that recorded the receipt of an October 2001 payment of $100,000 regarding a June 19, 2001 secondary offering for Scios, Inc. ("Scios"), which referred to the payment as a "research fee." This record and related documents were responsive to the staff's request and should have been produced by Prudential Equity during the investigation.

Section 17(b) of the Securities Act requires that any person who receives consideration, directly or indirectly, from an issuer, underwriter, or dealer for issuing research must fully disclose the receipt of the payment (whether past or prospective) and the amount. On or about October 19, 2001, Prudential Equity was paid $100,000 by the lead underwriter in connection with a common stock offering for Scios, Inc. on June 19, 2001. Prudential issued a research report on Scios on October 26, 2001 without disclosing the $100,000 payment.

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[2] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[3] *See In the Matter of Prudential Equity Group, LLC,* SEC Rel. No. 33-8469 (August 25, 2004).

D. LEGAL DISCUSSION

Section 17(b) of the Securities Act provides, in pertinent part, that:

> It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

15 U.S.C. § 77q(b). In order to violate Section 17(b), a person must "(1) publish or otherwise circulate (using a means of interstate commerce), (2) a notice or type of communication (which describes a security), (3) for consideration received (past, currently, or prospectively, directly or indirectly), (4) without full disclosure of the consideration received and the amount." *SEC v. Gorsek*, 222 F. Supp. 2d 1099, 1105 (C.D. Ill. 2001). Courts have held that Section 17(b) does not require a showing of scienter. *SEC v. Liberty Capital Group, Inc.*, 75 F. Supp. 2d 1160, 1163 (W.D. Wash. 1999); *SEC v. Huttoe*, 1998 WL 34078092 (D.D.C. Sept. 14, 1998).

Prudential Equity published and circulated communications in the form of a research report that described Scios securities for consideration received, but did not disclose the receipt or amount of this payment. As a result, investors did not receive information relating to the objectivity of the research.

In addition, Prudential Equity failed to timely produce documents regarding the Scios payment. Section 17(b) of the Exchange Act provides, in pertinent part, that:

> [a]ll records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

15 U.S.C. § 78q(b). The Commission's examination authority under Section 17(b) is self-executing and includes the authority to make or require copies of such records.[4] "Prompt access to a broker-

[4] S. Rep. No. 94-75, 94th Cong., 1st Sess. 120 (1975) ("The language of Section 17(b), which confers the examination authority, makes clear that it is self-executing, *i.e.*, there would be no need for the Commission, as a condition precedent to inspecting any reports, to require by rule that the persons described in Section 17(a) keep any such records."); *id.* ("[T]he authority to examine records would include the authority to make or require copies of such records.")

dealer's books and records is fundamental to the Commission's ability to discharge its examination, investigative and law enforcement responsibilities . . . [and] is particularly critical during an enforcement investigation." *In the Matter of Banc of America Securities LLC,* Exchange Act Rel. No. 49386 (March 10, 2004). By failing to timely produce documents regarding the Scios payment, Prudential Equity failed to comply with a reasonable regulatory request for documents, in violation of Section 17(b) of the Exchange Act.

The Commission has taken into account that Prudential Equity promptly notified the Commission's staff upon discovering the responsive documents and, in part for that reason, no civil penalty is imposed with regard to the production failure.

E. <u>CONCLUSIONS</u>

Based on the foregoing and Prudential Equity's Offer of Settlement, the Commission finds that Prudential Equity willfully[5] violated: (i) Section 17(b) of the Securities Act by publishing a communication that described a security for consideration received, directly from an underwriter, without disclosing the receipt of such consideration and the amount thereof; and (ii) Section 17(b) of the Exchange Act by failing to promptly produce documents in response to a regulatory request. In determining to accept the Offer, the Commission took into consideration the cooperation Prudential Equity afforded to the staff by informing the staff of the additional responsive documents following settlement.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer of Settlement.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 21C of the Exchange Act, that Respondent cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Exchange Act;

B. That Respondent is censured pursuant to Section 15(b)(4) of the Exchange Act; and

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5 "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, *see Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

C. That Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $125,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Prudential Equity Group, LLC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549-0801.

By the Commission.

Jonathan G. Katz
Secretary